

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

PERSONAL AUDIO, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 13-cv-270-JRG
	)	
CBS CORPORATION,	)	
	)	
Defendant.	)	<b>JURY TRIAL DEMANDED</b>

**ANSWER AND COUNTERCLAIMS OF  
DEFENDANT CBS CORPORATION TO THE FIRST AMENDED COMPLAINT**

Defendant CBS Corporation (“CBS”), by and through its undersigned counsel, hereby answers the First Amended Complaint of Personal Audio, LLC (“Personal Audio”) as follows, the numbered paragraphs corresponding to the like numbered paragraphs of the First Amended Complaint:

1. CBS admits that this is an action for patent infringement and that Personal Audio makes allegations against CBS.

**PARTIES**

2. CBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the First Amended Complaint, and therefore denies those allegations.

3. Admitted.

**JURISDICTION AND VENUE**

4. The allegations of Paragraph 4 of the First Amended Complaint regarding whether this action arises under the patent laws of the United States, Title 35 of the United States

Code, and whether this Court has exclusive subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) are legal conclusions to which no response is required. To the extent a response is deemed required, CBS admits that Personal Audio purports to bring this action under the patent laws of the United States, Title 35 of the United States Code, and that Personal Audio purports that this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), but otherwise denies the remaining allegations in Paragraph 4 of the First Amended Complaint.

5. CBS admits for purposes of this action that venue is proper in this District under 28 U.S.C. §§ 1391(c) and 1400(b), but otherwise denies the remaining allegations in Paragraph 5 of the First Amended Complaint.

6. CBS admits for purposes of this action that this Court has personal jurisdiction over CBS, admits that it conducts business by providing products and/or services to individuals in this District and in Texas, but otherwise denies the remaining allegations in Paragraph 6 of the First Amended Complaint.

## **COUNT I**

### **INFRINGEMENT OF U.S. PATENT NO. 8,112,504**

7. CBS is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the First Amended Complaint, and therefore denies those allegations.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

### **PRAYER FOR RELIEF**

- 1) Denied.
- 2) Denied.
- 3) Denied.
- 4) Denied.
- 5) Denied.

### **AFFIRMATIVE DEFENSES**

1. The '504 Patent is invalid under 35 U.S.C. §§ 101, 102, 103, and/or 112.
2. CBS does not infringe any valid claim of the '504 Patent either literally or under the doctrine of equivalents.
3. The First Amended Complaint fails to state a claim upon which relief can be granted.
4. Plaintiff cannot prove that this is an exceptional case under 35 U.S.C. § 285.
5. Plaintiff's claims for damages and costs are statutorily limited, at least, by 35 U.S.C. §§ 286, 287, and/or 288.
6. Plaintiff's claims are barred under principles of laches, waiver, and/or estoppel.
7. CBS denies each and every allegation of the First Amended Complaint not specifically admitted herein.
8. CBS reserves the right to add any additional defenses or counterclaims that discovery may reveal.

### **COUNTERCLAIMS**

For its counterclaims, CBS Corporation ("CBS") avers as follows:

## **JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction over these counterclaims under 28 U.S.C. §§ 2201, 2202, 1331, and 1338.

2. This Court has personal jurisdiction over Personal Audio because, *inter alia*, Personal Audio has subjected itself to the jurisdiction of this Court by filing the present action.

3. In view of Personal Audio's filing of this action, venue for adjudication of these Counterclaims is proper in this District pursuant to 28 U.S.C. § 1391.

## **THE PARTIES**

4. CBS is incorporated under the laws of the state of Delaware, and has its principal place of business in New York, at 51 W. 52nd Street, New York, New York, 10019.

5. On information and belief, Personal Audio is a Texas limited liability company with its principal place of business at 3827 Phelan Blvd., Suite 180, Beaumont, Texas 77707.

6. Personal Audio alleges to be the owner of U.S. Patent No. 8,112,504 ("the '504 Patent").

## **COUNT I: DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. 8,112,504**

7. CBS Corporation repeats and realleges the allegations in Paragraphs 1-6 of its Counterclaims as if fully set forth herein.

8. There is a substantial and continuing controversy between CBS Corporation and Personal Audio resulting from Personal Audio's assertion of infringement of the '504 Patent.

9. CBS Corporation does not infringe any valid and/or enforceable claim of the '504 patent either literally or under the doctrine of equivalents.

10. CBS Corporation therefore seeks a judicial declaration that it has not infringed, and does not infringe, any claim of the '504 Patent.

**COUNT II: DECLARATORY JUDGMENT OF  
INVALIDITY OF U.S. PATENT NO. 8,112,504**

11. CBS Corporation repeats and realleges the allegations in Paragraphs 1-10 of its Counterclaims as if fully set forth herein.

12. There is a substantial and continuing controversy between CBS Corporation and Personal Audio resulting from Personal Audio's assertion of infringement of the '504 Patent.

13. The claims of the '504 Patent are invalid for failure to satisfy one or more requirements under the patent laws of the United States, as set forth in Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, and/or 112. For example, one or more claims of the '504 patent are invalid under §§ 102 and 103 in view of the prior public use and prior invention of the claimed subject matter by Internet Talk Radio.

14. CBS Corporation therefore seeks a judicial declaration that the claims of the '504 Patent are invalid.

**REQUEST FOR RELIEF**

WHEREFORE, CBS Corporation prays that this Court enter judgment:

- a) that the claims of the '504 Patent are invalid;
- b) that no valid claim of the '504 Patent has been infringed by CBS Corporation;
- c) that this is an exceptional case within the meaning of 35 U.S.C. § 285, and awarding to CBS Corporation its reasonable attorneys' fees; and,
- d) awarding to CBS Corporation such further relief as this Court may deem necessary, just, and/or proper.

**JURY DEMAND**

In accordance with Fed. R. Civ. P. 38, CBS Corporation hereby respectfully demands a trial by jury of all issues and claims so triable.

Dated: June 27, 2013

Respectfully submitted,

/s/ Steven Lieberman  
(with permission by Jennifer P. Ainsworth)

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### **CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served on all counsel who have consented to electronic service, Local Rule CV-5(a)(3), on this the 27th day of June, 2013.

/s/ Jennifer P. Ainsworth  
Jennifer P. Ainsworth